



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-C-P-

DATE: SEPT. 24, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician and neonatology researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a clinical fellow in neonatal-perinatal medicine at the [REDACTED]. In July 2017, he began serving as an assistant professor and attending physician for the Division of Neonatology at [REDACTED].

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that he intends to continue his clinical research in the fields of pediatrics and neonatology. He explains that his research is aimed at improving “therapeutic and surgical treatment of infants suffering from life-threatening illnesses” and providing “neonatologists with better tools to analyze an infant patient’s condition.” He further states that his proposed research will involve “developing new diagnostic protocols that reduce extended hospital stays and infant mortality due to difficulties in diagnosis.”

The record includes articles discussing how a lack of proper preventive care has contributed to U.S. infant mortality rates and emphasizing the importance of improving medical care for preterm infants. For example, an article in *Time* magazine, entitled “American Babies Are Less Likely to Survive Their First Year Than Babies in Other Rich Countries,” indicates that “U.S. babies were three times more likely to die from extreme immaturity and 2.3 times more likely to experience sudden infant death syndrome.” Another article in *Managed Care* magazine points to the increasing number of preterm births in the United States and opportunities for improving infant care outcomes. We find that the Petitioner’s proposed clinical research focused on improving diagnostic and treatment protocols for infants has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. In addition to the aforementioned articles, the record includes letters of support discussing the potential benefits of his pediatric and neonatology research. For instance, [REDACTED] an assistant professor of pediatrics and pharmacology at [REDACTED]

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

██████ at ██████, asserts that the Petitioner's "research endeavors have the ability to improve care provided by all neonatologists throughout the world and save lives in a clinical setting." In addition, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through medical journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research, we find that he meets the first prong of the *Dhanasar* framework.³

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, published articles, conference presentations, academic credentials, and peer review of two manuscripts. He also offered a Google Scholar citation report for one of his articles and reference letters discussing his medical training, clinical work, and research projects.⁴

The Petitioner maintains that he "has conducted extensive research and published numerous articles examining the current state of neonatal medicine, advocating change in medical procedures in hospitals, and developing new pharmacological tools to help reduce the societal and economic strains caused by long-term admissions to neonatal intensive care units" (NICUs). In letters supporting the petition, several medical professors discussed the Petitioner's research aimed at developing better practices for managing infants' life-threatening medical conditions. For example, ██████ director of the kidney transplant program at ██████ in ██████ Illinois, states that the Petitioner utilized strain imaging to predict heart function in patients with Left Hypoplastic Heart Syndrome (HLHS) and "elucidated a novel way of measuring the function of the right side of the heart in HLHS." While ██████ notes that the Petitioner's findings were "published as an abstract in the *Journal of American College of Cardiology*," he does not offer specific examples of how the Petitioner's work has generated positive interest among relevant parties, has been implemented as part of NICU treatment programs, or otherwise reflects a record of success in his area of research.

In addition, ██████ professor of pediatrics at ██████ discusses the Petitioner's research involving bandages covered with anti-bacterial materials. ██████ states that the Petitioner's "work has shown that by using the selenium compound impregnated bandages, their efficacy was higher against common hospital acquired infections such as

³ With respect to the Petitioner's proposed care and treatment of patients and educational duties at ██████ while these endeavors have substantial merit, the record does not establish that his clinical and instructional work would impact the neonatology field and healthcare industry more broadly, as opposed to being limited to the patients he serves and his medical trainees. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's clinical work as a neonatologist and activities as a medical instructor do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

⁴ We discuss only a sampling of these letters, but have reviewed and considered each one.

Staphylococcus species, in particular, strains that are drug-resistant” The record includes a Google Scholar citation report showing that the Petitioner’s article in *Antibiotics* presenting this work has been cited to five times. He does not, however, offer comparative statistics indicating how often other pediatric or neonatal medicine researchers are cited, nor does the evidence otherwise demonstrate that his published and presented research constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet this prong.

With respect to the Petitioner’s study relating to utilization of a breathing tube for preterm babies with immature lungs, [REDACTED] chair of pediatrics at [REDACTED] states that the Petitioner’s “work has challenged the traditional management approach by showing that early removal of the breathing tube in these patients is safe and enhances the chance for normal lung development. In fact, survival may be improved as well.” In addition, [REDACTED] asserts the Petitioner “discovered [the] role of a specific [REDACTED] molecule called [REDACTED] and its involvement in decreasing the blood vessel development characteristic of patients with BPD [Bronchopulmonary Dysplasia]. This understanding may help develop therapeutic targets for treating BPD.”

The record demonstrates that the Petitioner has conducted, published, and presented research during his medical career. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner has not shown that his research has been frequently cited by independent neonatologists or otherwise served as an impetus for progress in the field, that it has affected clinical practice, or that it has generated substantial positive discourse in the broader medical community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in his area of research.

Regarding the Petitioner’s peer review activities, he provided documentation indicating that he reviewed two research articles.⁵ The Petitioner, however, has not documented the reputation of the journals or offered other evidence demonstrating that his peer review experience rises to the level of rendering him well positioned to advance his proposed research endeavor. The record does not show that the Petitioner’s occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance neonatology research.

In sum, the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, that rise to the level of rendering him well positioned to

⁵ The Petitioner’s manuscript review for [REDACTED] Publishers’ [REDACTED] post-dates the filing of the petition. See 8 C.F.R. § 103.2(b)(1), (12). The date when he reviewed the second article was not provided.

advance his proposed endeavor of conducting clinical research aimed at improving infant care in the neonatology field. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his research and clinical skills and accomplishments, and based on the impracticality of labor certification. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of S-C-P-*, ID# 1519844 (AAO Sept. 24, 2018)